

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-755

December 31, 2002

BREWER WATER DISTRICT
Request for Approval of the Transfer of
Assets to the City of Brewer

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY OF ORDER

We approve the transfer of the assets and obligations of the Brewer Water District (District) to the City of Brewer (City), as described herein, provided that the City assumes, redeems or otherwise satisfies the debts and obligations of the District.

II. PROCEDURAL HISTORY

On December 5, 2002, the Brewer Water District filed with the Commission its Request for Approval of the Transfer of its assets to the City of Brewer. In 2002, the Maine Legislature passed a bill entitled "An Act to Providing for the Supply of Water to the City of Brewer" ("the Act"). P & S.L., ch. 66. Pursuant to section 1 of the Act, the Brewer Water District is required, upon approval of a majority of the City Council and a majority of the trustees of the District, to convey, assign and transfer to the City for no consideration:

1. All physical and intangible assets of the Brewer Water District, including all cash, lands, water rights, waters, dams, reservoirs, mains, pipes, hydrants, gates, gate-boxes, fixtures, machinery, tools, apparatus, appliances, structures and any other physical element necessary and convenient for providing pure water for domestic, commercial, sanitary and municipal purposes;
2. All valid and legally enforceable contracts or other obligations between the Brewer Water District and any 3rd party as of the effective date of this Act. The City of Brewer shall redeem or otherwise satisfy all nonassumable debt of the Brewer Water District; and
3. All permits, licenses and approvals of any state or federal entity or agency. All property, contracts, obligations and franchises of the Brewer Water District must be conveyed subject to all debentures, bonds, mortgages, liens, and encumbrances thereon, all of which must be assumed by the City of Brewer.

Section 9 of the Act provides that upon completion of the transfer of assets and obligations of the District to the City in accordance with the Act, the clerk of the City shall file a certificate to that effect with the Secretary of State and the corporate existence of the District terminates. The certificate must be prepared by the city clerk once all of the necessary assets and obligations have been transferred from the District to the City. The City may commence and carry out municipal water service prior to completion of the transfer of assets and obligations of the District, if necessary to carry out the purposes of this Act, and, in such event, the District may continue to exist for the limited purpose of carrying out the requirements of the Act until such time as the transfer of the assets and obligations is complete. After filing the certificate with the Secretary of State, the city clerk shall submit legislation to repeal Private and Special Law 1945, Chapter 146, as amended.

As of December 4, 2002, the District had the following principal amount of outstanding debt:

\$3,142,000 to the Maine Municipal Bond Bank

\$9,945,776 to the United States of America (U.S.D.A. Rural Development)

\$328,000 to Banknorth, N.A.

The City has agreed to assume all of the District's obligations with respect to this debt by execution of assumption agreements. The assumption agreement(s) with U.S.D.A. – Rural Development have not, as of the date of this Order, been approved by that Agency.

As required by Section 10 of the Act, the legal voters of the City of Brewer accepted the provisions of the Act at a municipal election held on June 11, 2002. Pursuant to Section 1 of the Act, a majority of the City Council of Brewer conditionally approved the transfer of the District's assets and obligations on July 16, 2002. On August 19, 2002, a majority of the trustees of the Brewer Water District conditionally approved the transfer of its assets and obligations to the City.

Upon completion of the transfer and assignment, the City of Brewer shall own and operate the business of the District through the newly created City of Brewer Water Department. All current District employees will be transferred to the Water Department and will continue their employment as employees of the Water Department, should they so choose.

The sale, disposition, or encumbrance of property that is necessary or useful in the performance of a utility's duties to the public and the authority to abandon service to the public are governed by Title 35-A § 1101-1104 and require Commission approval. The Commission will approve the sale and transfer by the District of all of its plants, properties, assets, franchises, rights, and privileges to the City of Brewer Water Department in consideration of the assumption by the City of all of the outstanding

debts, obligations, and liabilities of the District, including, without limitation, the assumption of any outstanding notes or bonds of the District that are due on or after the date of the transfer. The Commission also authorizes the City of Brewer Water Department to perform the public service functions in the City of Brewer, now being performed by the District, at rates now being charged to customers of the District.

Nothing in this Order shall limit or restrict the powers of the Commission in determining and fixing any rate, fare, toll, or charge of the City of Brewer Water Department.

Accordingly, it is

O R D E R E D

1. That the Brewer Water District is authorized to sell, transfer, and convey to the City of Brewer Water Department by an appropriate instrument or instruments of conveyance all, and not less than all, of its plants, properties, assets, franchises, rights, privileges, permits, licenses, and approvals of any municipal, state or federal entity or agency, in consideration of the assumption by the City of Brewer Water Department of all of the outstanding debts, obligations, contracts, and liabilities of the Brewer Water District including, without limitation, the assumption of any outstanding notes or bonds of the Brewer Water District that are due on or after the date of the transfer;

2. That the City of Brewer Water Department is authorized to purchase and acquire all of said properties and to assume all contracts (1) relating to supplying water, and (2) in effect on the date of the transfer between the Brewer Water District and any person, firm, or corporation;

3. That upon the transfer of the water system assets by the Brewer Water District to the City of Brewer Water Department, the Brewer Water District is authorized pursuant to 35-A M.R.S.A. § 1104 to discontinue the service that it is providing to the public in the City of Brewer and the Towns of Veazie, Orrington, Eddington and Holden, Penobscot County, Maine;

4. That upon the transfer of the water system assets to the City of Brewer Water Department, it shall assume and be responsible for providing water service to the public in the City of Brewer and the Towns of Veazie, Orrington, Eddington and Holden, Penobscot County, Maine;

5. That until further order of this Commission, the City of Brewer Water Department shall provide water service in the area now being served by the Brewer Water District pursuant to and in accordance with the filed tariffs, including terms and conditions, of the Brewer Water District; provided, however, that the City of Brewer Water Department, shall, upon transfer of the water system assets to it, file said tariffs, including terms and conditions, with the Commission under its own name;

6. That the Brewer Water District shall submit to the Commission a copy of its final balance sheet within 60 days of the date of the sale; and

7. That the City of Brewer Water Department shall supply the Commission the following within 60 days of the date of the purchase;

a) A copy of the entry on the books of the City of Brewer Water Department, recording the acquisition; and

b) A copy of the opening balance sheet of the City of Brewer Water Department following acquisition.

Dated at Augusta, Maine, this 31st day of December, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond

COMMISSIONER ABSENT: Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.